

Federal Maritime Commission

§ 540.7

any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (c) of this section.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in appendix A of subpart A of this part.

(c) Filing with the Commission a guaranty on Form FMC-133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-133A, however, may be amended by the Commission in a particular case for good cause.

(d) Revenues derived from whole-ship charters, as defined in § 540.2(1), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of the execution of the whole-ship charter if the operator has a Performance Certificate for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application; (2) The chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and (3) A document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89-777 (46 U.S.C. 44101-44102, 44104-44106) may be affected by the reduction in section 3, Public Law 89-777, financial responsibility cov-

erage attributable to the exclusion of such funds from the operator's UPR.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990; 57 FR 41891, Sept. 14, 1992; 57 FR 62480, Dec. 31, 1992; 67 FR 44776, July 5, 2002; 74 FR 50730, Oct. 1, 2009]

§ 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC-132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-132A, however, may be amended by the Commission in a particular case for good cause.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the gross passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given or a satisfactory bond has been provided, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.